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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT

NGUYEN, Manh Tuan

Petitioner,

v.

MARKWAYNE MULLIN, Secretary of the
Department of Homeland Security, PAMELA
JO BONDI, Attorney General, TODD M.
LYONS, Acting Director, Immigration and
Customs Enforcement, JESUS ROCHA, Acting
Field Office Director, San Diego Field Office,
CHRISTOPHER LAROSE, Warden at Otay
Mesa Detention Center,

Respondents.

Case No. '26CV3067 BJC BJW

**PETITION FOR WRIT OF
HABEAS CORPUS**

1 **INTRODUCTION**

2 Petitioner Manh Tuan Nguyen is a 38-year-old Vietnamese Catholic asylum seeker who
3 presented himself at the San Diego port of entry on November 10, 2025, immediately requested
4 asylum, and has been held at Otay Mesa Detention Center for more than six months without ever
5 receiving an individualized bond hearing. Detained pursuant to 8 U.S.C. § 1225(b) as an arriving
6 alien, he has had no opportunity before any adjudicator to demonstrate that he poses no danger to
7 the community and no flight risk.

8
9 Mr. Nguyen is a devout Catholic who was arrested, handcuffed, beaten for three days, and
10 hospitalized by Vietnamese police for organizing peaceful opposition to the government's seizure
11 of his church's land. He passed his credible fear interview, filed a fully supported asylum
12 application backed by corroborating evidence, and has diligently prosecuted his case at every
13 stage. He has no criminal record anywhere. Having just filed his appeal to the Board of
14 Immigration Appeals, he now faces many additional months if not years of mandatory detention
15 – with no pathway to demonstrate his individual circumstances to any adjudicator, regardless of
16 the merit of his claims.

17
18 This petition presents a straightforward constitutional question: does the Fifth Amendment's Due
19 Process Clause require an individualized bond hearing when immigration detention becomes
20 unreasonably prolonged? The overwhelming majority of federal district courts have answered
21 yes. *See, e.g., Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020); *Cong v. Noem*, No.
22 25-CV-3730-GPC-DEB, 2026 WL 76566 (S.D. Cal. Jan. 9, 2026). This Court should join them.

1 Because a standard bond hearing before a randomly assigned Immigration Judge at Otay Mesa
2 may not provide a meaningful remedy given emerging evidence of compromised IJ
3 independence, this Court should order Mr. Nguyen's immediate release, or conduct its own
4 individualized custody hearing, or at minimum impose strict safeguards on any agency-level
5 bond proceeding.

6 **Jurisdiction and Venue**

7 This Court has jurisdiction under 28 U.S.C. § 2241(c)(3), which authorizes federal courts to
8 grant a writ of habeas corpus to any person held "in custody in violation of the Constitution or
9 laws or treaties of the United States." The Supreme Court has long recognized that § 2241
10 provides jurisdiction for constitutional challenges to the duration of immigration detention. *See*
11 *Zadvydas v. Davis*, 533 U.S. 678, 687–88 (2001). The Ninth Circuit has likewise confirmed §
12 2241 jurisdiction over constitutional challenges to prolonged immigration confinement. *See*
13 *Diouf v. Napolitano*, 634 F.3d 1081, 1086 (9th Cir. 2011). This petition presents exactly such a
14 challenge.

15
16 Venue is proper in the Southern District of California because Petitioner is currently detained at
17 Otay Mesa Detention Center, 7488 Calzada De La Fuente, San Diego, California 92154, a
18 facility within this District. The proper respondent in a habeas action is the immediate custodian
19 — the person with day-to-day control over the petitioner's confinement. *Rumsfeld v. Padilla*, 542
20 U.S. 426, 434–35 (2004). Respondent, the Officer in Charge of Otay Mesa Detention Center, is
21 that person and is within this Court's territorial jurisdiction.

22 **Parties**

1 Petitioner MANH TUAN NGUYEN is a citizen and national of Vietnam currently detained at
2 Otay Mesa Detention Center, 7488 Calzada De La Fuente, San Diego, California 92154. He is
3 detained pursuant to 8 U.S.C. § 1225(b) as an applicant for admission. He brings this petition
4 through counsel.

5

6 Respondent MARKWAYNE MULLIN is the Secretary of the U.S. Department of Homeland
7 Security and is responsible for the administration and enforcement of the immigration laws of the
8 United States, including the policies and practices governing the detention of noncitizens at Otay
9 Mesa Detention Center. He is sued in his official capacity only.

10

11 Respondent PAMELA JO BONDI is the Attorney General of the United States and is
12 responsible for the Executive Office for Immigration Review, including the immigration courts
13 and the Board of Immigration Appeals. She is sued in her official capacity only.

14

15 Respondent TODD M. LYONS is the Acting Director of U.S. Immigration and Customs
16 Enforcement and is responsible for the detention and removal operations of ICE nationwide,
17 including at Otay Mesa Detention Center. He is sued in his official capacity only.

18

19 Respondent JESUS ROCHA is the Acting Field Office Director of the San Diego Field Office of
20 ICE Enforcement and Removal Operations and is responsible for ICE detention operations
21 within San Diego and Imperial Counties, including at Otay Mesa Detention Center. He is sued in
22 his official capacity only.

23

24

1 Respondent CHRISTOPHER LAROSE is the Warden of Otay Mesa Detention Center and is the
2 immediate custodian with day-to-day responsibility for Petitioner's physical confinement. As
3 Petitioner's immediate custodian, he is the proper respondent for purposes of this habeas petition.
4 *See Rumsfeld v. Padilla*, 542 U.S. 426, 434–35 (2004). He is sued in his official capacity only.

5
6 **Statement of Facts**

- 7 1. Mr. Nguyen is a 38-year-old practicing Catholic from Ba Don, Quang Binh Province,
8 Vietnam. He served as a catechist and Head of Parish Safety at Tan My Catholic Church.
- 9 2. On January 12, 2025, Vietnamese authorities arrested, detained, and brutally tortured him
10 for three days because he organized parishioners to peacefully protest the government's
11 attempted seizure of church land. He was handcuffed, repeatedly beaten over his entire
12 body, deprived of food, and subjected to severe psychological abuse while police mocked
13 his Catholic faith. He was released on January 14, 2025, and required immediate
14 hospitalization for his injuries.
- 15 3. After his release, the authorities continued to target him. They attempted another seizure
16 of church land in April 2025, blockaded the church, and harassed him and his family. In
17 October 2025 they issued two official police summonses ordering him to report to the
18 station. Fearing further arrest and torture, Mr. Nguyen fled Vietnam on October 20, 2025.
- 19 4. On November 10, 2025, Mr. Nguyen presented himself to U.S. Border Patrol at the San
20 Diego border and immediately requested asylum. He has been detained at Otay Mesa
21 Detention Center for the past six months.
- 22 5. Mr. Nguyen passed his credible fear interview and filed a detailed Form I-589
23 Application for Asylum and Withholding of Removal, supported by 94 pages of
24

1 corroborating evidence, including his sworn declaration, the two October 2025
2 Vietnamese police summonses, his hospital Certificate of Injury, photographs, letters of
3 support from parishioners and church leaders, and extensive country-conditions reports
4 from Freedom House, Amnesty International, Human Rights Watch, and the U.S. State
5 Department documenting systematic repression of Catholics and church leaders in
6 Vietnam.

7 6. His merits hearing was held before an Immigration Judge at Otay Mesa. The Immigration
8 Judge denied relief. Mr. Nguyen has already appealed to the Board of Immigration
9 Appeals. If the BIA upholds the denial, he intends to file a petition for review with the
10 Ninth Circuit.

11 7. Mr. Nguyen has been fully diligent throughout these proceedings. He retained counsel
12 immediately, filed a complete and well-supported asylum application, and has never
13 requested unnecessary continuances.

14 8. Mr. Nguyen has no criminal record in the United States or Vietnam. He poses no danger
15 to the community and is not a flight risk. He has a wife and three young children still in
16 Vietnam who depend on him.

17 9. Conditions at Otay Mesa Detention Center are indistinguishable from penal confinement:
18 detainees are held behind razor wire and concrete walls, forced to wear prisoner
19 uniforms, subjected to constant armed guard supervision, and have severely restricted
20 movement, visitation, and access to the outside world. Mr. Nguyen's prior experience of
21 being tortured by Vietnamese police makes this prolonged detention especially traumatic
22 and psychologically damaging.

23 **Legal Argument**

1 **I. This Court Has Jurisdiction Under 28 U.S.C. § 2241**

2 Section 2241 confers jurisdiction on federal district courts to issue writs of habeas corpus to
3 persons held in custody "in violation of the Constitution or laws or treaties of the United States."
4 28 U.S.C. § 2241(c)(3). The Supreme Court has expressly confirmed that § 2241 provides a
5 vehicle for constitutional challenges to immigration detention. *Zadvydas*, 533 U.S. at 687–88.
6 The Ninth Circuit has likewise recognized § 2241 jurisdiction over claims that prolonged
7 immigration confinement violates due process. *Diouf*, 634 F.3d at 1086. Because this petition
8 raises exactly that constitutional claim, this Court has jurisdiction to hear it.

9
10 **II. Administrative Exhaustion is not Required and Would be Futile**

11 This petition does not challenge the merits of Mr. Nguyen's removal proceedings. It challenges
12 the constitutional adequacy of his ongoing detention without an individualized bond hearing. No
13 administrative body has authority to grant that relief: the Board of Immigration Appeals cannot
14 order a bond hearing for persons detained under § 1225(b), and no other agency-level process
15 exists that would remedy the constitutional violation at issue. Where no administrative remedy is
16 available to redress the injury, exhaustion is not required.

17
18 There is no statutory exhaustion requirement in 28 U.S.C. § 2241. *Castro-Cortez v. INS*, 239
19 F.3d 1037, 1047 (9th Cir. 2001). Any exhaustion obligation under § 2241 is purely prudential,
20 and courts may waive it where "administrative remedies are inadequate or not efficacious,
21 pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the
22 administrative proceedings would be void." *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir.
23 2004). Indeed, "[i]t is axiomatic that one need not exhaust administrative remedies that would be

1 futile or impossible to exhaust." *Singh v. Ashcroft*, 362 F.3d 1164, 1169 (9th Cir. 2004). The
2 futility exception applies with particular force to constitutional claims because "the BIA does not
3 have jurisdiction to determine the constitutionality of the statutes it administers." *Padilla-Padilla*
4 *v. Gonzales*, 463 F.3d 972, 977 (9th Cir. 2006). All three conditions for waiver are present here:
5 (1) no administrative body can order the bond hearing Petitioner seeks; (2) requiring him to
6 await a final BIA ruling, which may take years and cause irreparable harm through continued
7 unconstitutional confinement; and (3) his claim is a constitutional challenge to the detention
8 statute itself, which lies entirely outside the BIA's jurisdiction. *See Iraheta-Martinez v. Garland*,
9 12 F.4th 942, 949 (9th Cir. 2021) (futility exception "carved for constitutional challenges to
10 [DHS] procedures").

11
12 The government may cite *Leonardo v. Crawford*, 646 F.3d 1157, 1160–61 (9th Cir. 2011), for
13 the proposition that a detainee who has received an adverse bond ruling should typically exhaust
14 by appealing to the BIA before seeking habeas relief. *Leonardo* is inapposite. That case involved
15 a detainee who had already received an individualized bond hearing and was appealing the
16 outcome. Mr. Nguyen has never received any bond hearing at all. There is no BIA bond
17 determination to appeal, and no administrative vehicle exists through which he could obtain the
18 individualized custody determination the Constitution requires.

19
20 Even if some exhaustion requirement applied, it would be excused on futility and irreparable
21 harm grounds. Each additional day of detention without a bond hearing is a continuing
22 constitutional violation. Requiring Mr. Nguyen to await a final BIA or court-of-appeals
23 determination before he can challenge his detention would deprive him of any meaningful
24

1 remedy. Courts in this district have consistently entertained § 2241 petitions challenging §
2 1225(b) detention without requiring exhaustion of removal-order remedies. *See Kydyrali*, 499 F.
3 Supp. 3d at 771; *Gao v. LaRose*, No. 25-CV-2084-RSH-SBC, 2025 WL 2770633, at *3 (S.D.
4 Cal. Sept. 26, 2025).

5 **III. Prolonged Mandatory Detention Under § 1225(b) Without an Individualized Bond**
6 **Hearing Violates the Fifth Amendment’s Due Process Clause**

7 **A. Governing Legal Framework**

8 The Fifth Amendment guarantees that no person shall be deprived of liberty without due process
9 of law. U.S. Const. amend. V. This protection extends to noncitizens facing removal. *Zadvydas*
10 *v. Davis*, 533 U.S. 678, 693 (2001). In *Zadvydas*, the Supreme Court recognized that indefinite
11 immigration detention raises serious constitutional concerns, holding that "[f]reedom from
12 imprisonment — from government custody, detention, or other forms of physical restraint — lies
13 at the heart of the liberty that [the Due Process] Clause protects." *Id.* at 690. To avoid the
14 constitutional question, the Court read an implicit temporal limit into the post-removal detention
15 statute. *Id.* at 699–701.

16
17 In *Jennings v. Rodriguez*, 583 U.S. 281 (2018), the Supreme Court overruled the Ninth Circuit's
18 statutory holding that § 1225(b) implicitly entitled detainees to periodic bond hearings, but
19 expressly reserved the constitutional question: whether prolonged mandatory detention of §
20 1225(b) detainees without a bond hearing violates the Fifth Amendment's Due Process Clause.
21 *Id.* at 312–13. That question is now squarely before this Court.

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1 Although the Supreme Court has not resolved that question, the Ninth Circuit addressed the
2 constitutional framework for prolonged immigration detention in *Diouf v. Napolitano*, 634 F.3d
3 1081 (9th Cir. 2011). In *Diouf*, the court held that when immigration detention under § 1231
4 becomes prolonged, a detainee's liberty interest outweighs the government's interest in continued
5 detention without a hearing, and an individualized bond hearing is constitutionally required. *Id.*
6 at 1091–92. The constitutional logic of *Diouf* applies with equal, and indeed greater, force under
7 § 1225(b), where an asylum seeker like Mr. Nguyen has committed no crime and sought asylum
8 at the border

9 **B. *Demore v. Kim* Does not Control**

10 *Demore v. Kim*, 538 U.S. 510 (2003), which upheld mandatory detention under § 1226(c), is
11 distinguishable on every dimension the Court found controlling.

12
13 First, *Demore* addressed § 1226(c), which applies exclusively to noncitizens who have been
14 convicted of specific criminal offenses. Mr. Nguyen has no criminal record. He is detained under
15 § 1225(b) as an asylum seeker, not because of any conviction. The criminal-alien population at
16 issue in *Demore* bears no resemblance to Mr. Nguyen's situation.

17
18 Second, *Demore* emphasized that § 1226(c) detention is ordinarily "brief" — approximately five
19 months on average, and typically concluding before the end of the removal period. *Id.* at 529.
20 Mr. Nguyen has already exceeded that benchmark. With his BIA appeal just filed and a potential
21 petition for review to the Ninth Circuit thereafter, his total detention may extend two or three
22 additional years. *Demore's* brevity rationale cannot justify such open-ended confinement.

1 Third, *Demore* found that mandatory detention served the important government interest of
2 ensuring appearance by individuals who had already demonstrated, through a criminal
3 conviction, a willingness to disregard legal obligations. *Id.* at 521. Mr. Nguyen has demonstrated
4 the opposite: he voluntarily crossed the border at a port of entry, immediately sought asylum,
5 retained counsel, and has cooperated with every step of the proceedings. No adjudicator has ever
6 found him to be a flight risk, because no adjudicator has ever considered the question.

7
8 Finally, *Demore* itself left open the possibility that individualized determination may be
9 constitutionally required if detention becomes unreasonable. *Id.* at 532 (Kennedy, J., concurring).
10 Mr. Nguyen's detention has become precisely that.

11 ***C. The Overwhelming Majority of Federal Courts Have Required Bond Hearings for***
12 ***Prolonged § 1225(b) Detention.***

13 In the wake of *Jennings*, virtually every district court to address the constitutional question has
14 held that prolonged § 1225(b) mandatory detention without an individualized bond hearing
15 violates the Fifth Amendment. Courts in this district have repeatedly so held. *See Kydyrali v.*
16 *Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020) (Battaglia, J.) (ordering bond hearing after six
17 months of § 1225(b) detention); *Cong v. Noem*, No. 25-CV-3730-GPC-DEB, 2026 WL 76566, at
18 *3 (S.D. Cal. Jan. 9, 2026); *Gao v. LaRose*, No. 25-CV-2084-RSH-SBC, 2025 WL 2770633, at
19 *4 (S.D. Cal. Sept. 26, 2025); *Abdul Kadir v. LaRose*, No. 25CV1045-LL-MMP, 2025 WL
20 2932654, at *3 (S.D. Cal. Oct. 15, 2025). *See also Banda v. McAleenan*, 385 F. Supp. 3d 1099,
21 1116 (W.D. Wash. 2019). This Court should reach the same conclusion.

22
23 **IV. Mr. Nguyen's Detention is Unreasonably Prolonged Under Any Applicable Standard**
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1 Courts applying the due process prolonged-detention analysis consider: (1) the length of past
2 detention; (2) the likely duration of future detention; (3) the reasons for delay; and (4) the
3 conditions of confinement. *Diouf*, 634 F.3d at 1092; *Kydyrali*, 499 F. Supp. 3d at 772–73. Mr.
4 Nguyen satisfies every factor.

5 **A. Six Months of Past Detention is Unreasonable and Future Detention Will be Far**
6 **Longer**

7 The length of detention is the most important consideration. Mr. Nguyen has been detained for
8 more than six months in jail-like conditions with no individualized custody determination.
9 Courts have found even shorter detention periods constitutionally unreasonable. *See Brissett v.*
10 *Decker*, 324 F. Supp. 3d 444, 450 (S.D.N.Y. 2018) (nine months). The six-month threshold is
11 particularly well-grounded because it echoes the presumptively reasonable benchmark identified
12 by the Supreme Court in *Zadvydas*, 533 U.S. at 701.

13
14 But it is the forward-looking duration that makes this case especially compelling. Mr. Nguyen
15 filed his BIA on May 14, 2026. BIA proceedings for detained cases can take six months to over a
16 year to resolve. If the BIA denies relief, seeking Ninth Circuit review will add on one to three
17 additional years. Viewed in totality, Mr. Nguyen's detention may extend two to three years or
18 more from the date of his arrival. This is precisely the type of open-ended, potentially indefinite
19 confinement that the Due Process Clause cannot tolerate. *Zadvydas*, 533 U.S. at 696–97.

20 **B. Punitive Conditions of Confinement Independently Weight in Favor of Relief**

21 Conditions at Otay Mesa Detention Center are indistinguishable from penal incarceration.
22 Detainees are confined behind razor wire and concrete, required to wear prison uniforms,
23 subjected to round-the-clock armed-guard supervision, and permitted only severely restricted
24

1 movement, visitation, and contact with the outside world. Courts have recognized that punitive
2 conditions of confinement strengthen the due process case for a bond hearing. *See Kydyrali*, 499
3 F. Supp. 3d at 773.

4
5 For Mr. Nguyen specifically, this detention environment is not oppressive and traumatic. Having
6 survived three days of torture at the hands of Vietnamese police, his confinement in a jail-like
7 facility under continuous armed supervision inflicts ongoing psychological harm that compounds
8 with every passing day. The longer his detention continues, the more severe and irreversible this
9 harm becomes.

10
11 **V. Because Immigration Judges' neutrality at Otay Mesa has been severely compromised,**
12 **this Court must order outright release or impose strict safeguards.**

13 Recent evidence demonstrates that Otay Mesa IJs and DHS have adopted practices that
14 effectively nullify court-ordered bond hearings. Local attorneys report that some IJs deny bond
15 on grounds unrelated to danger or flight risk (such as upcoming hearing dates) and that DHS
16 routinely appeals grants to trigger automatic stays. These practices are part of a broader,
17 coordinated effort by the current administration to undermine IJ independence, including mass
18 firings of IJs, BIA purges, and policy memos that pressure judges to favor the government and
19 minimize due process.

20
21 In these circumstances, a standard bond hearing before a randomly selected Otay Mesa IJ cannot
22 be trusted to provide meaningful due process. This Court should therefore order immediate
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1 release or, at minimum, conduct its own custody hearing or impose rigorous safeguards on any
2 agency hearing.

3
4 **Claim and Prayer for Relief**

5 Detaining Petitioner Without a Bond Hearing Violates the Fifth Amendment’s Due Process
6 Clause because a routine bond hearing before a randomly selected Immigration Judge at Otay
7 Mesa would not adequately redress the constitutional violation, Petitioner respectfully requests
8 the following relief:

- 9 1. Immediate release from custody on his own recognizance or under reasonable conditions
10 of supervision. Given the strength of Mr. Nguyen’s asylum claim, the length of his
11 detention, the additional months or years the BIA appeal will require, and the
12 compromised neutrality of Otay Mesa IJs, outright release is the only remedy that fully
13 satisfies due process. *See Moctezuma v. Henkey*, No. 1:25-CV-00741-BLW, 2026 WL
14 18809, at *5 (D. Idaho Jan. 2, 2026).
- 15 2. In the alternative, this Court should hold its own individualized custody hearing and
16 determine whether the government can prove by clear and convincing evidence that Mr.
17 Nguyen poses a danger to the community or a flight risk.
- 18 3. At minimum, the Court should order a bond hearing before an Immigration Judge with
19 the following mandatory safeguards:
- 20 ○ The government bears the burden of establishing by clear and convincing
21 evidence that Mr. Nguyen is a danger or flight risk;
 - 22 ○ Concerns about “disrupting the hearing schedule” or upcoming court dates shall
23 not constitute a valid basis to deny bond;
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- This Court shall retain jurisdiction to review the bond decision for compliance with due process;
- ICE is prohibited from invoking the automatic stay under 8 C.F.R. § 1003.19(i)(2).

4. The Court should grant any and all other relief it deems just and proper.

DATED this 15 of May, 2026.

/s/ Morris Jacob Wilner
MORRIS JACOB WILNR
Attorney for Petitioner